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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,794	12/29/2000	Dennis M. Briddell	062891.0464	5316
7590	11/19/2004		EXAMINER	
Baker Botts L.L.P. 2001 Ross Avenue Dallas, TX 75201-2980			VINCENT, DAVID ROBERT	
			ART UNIT	PAPER NUMBER
			2661	

DATE MAILED: 11/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/751,794

**Applicant(s)**

BRIDDELL ET AL.

**Examiner**

David R Vincent

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/1/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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***Response to Amendment***

In response to the amendment, a Final Rejection is included below.

***Note***

The examiner included the non-patent literature again because it did not appear in the IFW (electronic form) and may need to be scanned.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hickali (US 5,619,500), in view of Stallings 1999 ISDN/ATM text book as specified in the previous office action.

***Response to Arguments***

3. Applicant's arguments filed 9/01/04 have been fully considered but they are not persuasive.

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In re pg. 7 the applicant argues there is no suggestion or motivation to combine the applied art.

In response, to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is not what individual references themselves suggest but rather what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re Keller, 648 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Sernaker, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983); In re McLaughlin, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA 1969). In the present application, the Stallings text book simply adds details which are not included in the U.S. Patent (Hiekali) because Hiekali considers the details of how units comply with the ATM protocol (see e.g., pgs. 438-446) notoriously well known or nonessential to his invention.

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In re pg. 7, the applicant argues that Hiekali fails to offer any system associated with encapsulation.

In response, the examiner strongly disagrees because one of ordinary skill in the art would understand that "encapsulation" merely implies wrapping of data in a particular protocol header or using a layer which adds a header to a PDU (data from higher layer/protocol data unit). Since Hiekali clearly discloses an ATM "gateway" (302, Fig. 3; col. 3 lines 19-25) which one of ordinary skill would recognize as a unit which converts protocols (performs translations) by "encapsulating" and/or adding headers to higher layer PDUs so that non-ATM data can pass over an ATM bus after being encapsulated into ATM fixed length cells.

In re pg. 7, the applicant argues Hiekali fails to mention the term encapsulation.

In response, one of ordinary skill in the art would understand the OSI (Open Systems for Interconnections) model and/or the ATM adaptation layer units and how transmission units such as ATM gateways and many other devices take data from higher layers such as the application layer, e.g., an Email, video, or voice data and encapsulate said data into

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packets/frames so that said data can be sent across a bus (piece of wire, or medium) to a destination.

In re pg. 8, the applicant argues that the applied art are not combinable because Stallings offers no subject matter that is combinable with Hiekali.

In response, the examiner disagrees because Stallings which is an ATM text book teaches details of how a transmission convergence sublayer operates (see e.g., pgs. 438-446) and Hiekali discloses an ATM gateway and using a transmission convergence sublayer. Therefore Stallings simply adds the details of how the units such as ATM gateways and framing units operate in order to comply with the ATM protocol.

#### **Conclusion**

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated


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from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David R Vincent whose telephone number is 571 272 3080. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye can be reached on 571 272 3078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David R Vincent  
Primary Examiner

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